Supreme Court, U.S.
FILED

181

No. (1) 101004

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In The
Supreme Court of the United States

PIRELLI PNEUS LTDA.,

Petitioner,

vs.

GARY GUNN, Individually, and as guardian of KATHY GUNN, his wife, an incapacitated person,

Respondents.

On Petition For Writ Of Certiorari To The Second District Court Of Appeal For The State Of Florida

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether due process limitations permit the exercise of jurisdiction over the foreign producer of an allegedly defective product, based on the forum contacts of distributors of the product, without evidence showing either control by the producer over the distributors or some legally recognized basis for disregarding their separate corporate identities.

PARTIES

The parties to the proceedings for which review is sought are:

Respondents Gary Gunn, individually, and as guardian of Kathy Gunn, his wife, who are the plaintiffs in the proceedings below;

Petitioner Pirelli Pneus Ltda., one of several defendants below;

Pirelli & C. S.p.A., Pirelli Tyre S.p.A., and Pirelli Tyre Holland N.V., who were defendants below, and have been dismissed on jurisdictional grounds, with no appeal of their dismissal; and

Pirelli Tire LLC, Pirelli North America, Inc., Francisco's Custom Body Shop, Inc., and Lemans Corporation d/b/a Parts Unlimited, defendants below who have made no challenge to jurisdiction.

CORPORATE DISCLOSURE

Pursuant to Supreme Court Rule 29.6, Petitioner, Pirelli Pneus Ltda., hereby discloses that it is incorporated under the laws of Brazil and is a subsidiary of Pirelli Tyre S.p.A., an Italian corporation. Neither Pirelli Pneus Ltda. nor Pirelli Tyre S.p.A. are publicly traded in the United States of America.

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OPINIONS BELOW

The per curiam opinion of Florida's Second District Court of Appeal is unpublished, and is in the Appendix, at App. 1-2. Also in the Appendix, at App. 8-11, are the Circuit Court's Order on multiple Motions to Dismiss and Judicial Notice and the Circuit Court's Order Granting Pirelli Pneus' Motion for Clarification of the Court's Order issued May 6, 2010, and its incorporated Amended Order on Multiple Motions to Dismiss and Judicial Notice, at App. 3-7.

STATEMENT OF JURISDICTION

The decision of the Second District Court of Appeal was filed on December 29, 2010. As there was no written opinion, there are no grounds for seeking review by the Florida Supreme Court. *See* Fla. Const. Art. V, § 3. The United States Supreme Court has jurisdiction to review the decision of the Second District Court of Appeal pursuant to 28 U.S.C. § 1257, as, given the unavailability of review by the Florida Supreme Court, that decision is a final decision on jurisdiction rendered by the highest court of Florida in which a decision could be obtained, and rejects a constitutional due process claim that the Florida courts should not exercise personal jurisdiction over Petitioner. *See, e.g., Nash v. Florida Ind. Comm'n*, 389 U.S. 235, 237 n.1 (1967).

CONSTITUTIONAL PROVISIONS INVOLVED IN THIS CASE

The question presented involves the Due Process Clause of the Fourteenth Amendment to the United States Constitution, which provides that: "No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law. . . ." U.S. Const. Amend. XIV.

STATEMENT OF THE CASE

Gary Gunn, individually and as guardian of his wife, Kathy Gunn ("Plaintiffs"), filed suit in the Circuit Court of the Tenth Judicial Circuit, in and for Polk County, Florida, seeking to recover damages allegedly suffered in a motorcycle accident in Kansas. Plaintiffs allege that the accident was caused by a defective motorcycle tire manufactured by Pirelli Pneus Ltda. ("Pneus"). Plaintiffs claimed Pneus was aware of the distributive system by which the subject tire moved from its place of manufacture, Brazil, until it was purchased and installed onto their motorcycle in Florida.

After the tire was produced by Pneus in Brazil, and before ever leaving that country, title to the tire transferred to Lemans Corporation d/b/a Parts Unlimited ("Lemans"), which took title at the loading dock in Brazil. Lemans brought the tire into the

United States, where it was eventually delivered to Francisco's Custom Body Shop, Inc. ("Francisco's"). Francisco's sold the tire to Mr. Gunn, and installed it onto his motorcycle. While Mr. and Mrs. Gunn were both riding the motorcycle on a highway near Russell, Kansas, the tire allegedly failed and they crashed, suffering injuries.

In response to the complaint, Pneus along with other foreign Pirelli entities: Pirelli Tyre, S.p.A., Pirelli Tyre Holland N.V., and Pirelli & C. S.p.A. ("Other Foreign Pirelli Defendants") moved for, inter alia, dismissal for lack of jurisdiction. Affidavits were submitted in support of the motions for dismissal. While Plaintiffs raised objections to the form of the affidavits, the Circuit Court accepted the evidence submitted by Pneus and the Other Foreign Pirelli Defendants and relied upon this evidence to dismiss the Other Foreign Pirelli Defendants. Plaintiffs argued that information on the internet, coupled with invoices and bills of lading, indicated the existence of a chain of distribution for the tire at issue, and that all parties involved with that alleged distribution network should be subject to jurisdiction in Florida. The trial court refused to take judicial notice of much of the information. The remaining information does not evidence the degree of relatedness of Pneus to the entities in the distribution chain, any control by Pneus over the distribution chain, or any evidence sufficient to show alter ego status or other grounds for disregarding the separate corporate entities. The shipping documents show that the tires were shipped

"ex works," which indicates that the seller delivered the goods at its own place of business and the buyer paid all transportation costs and bore all risks of shipment.

The Circuit Court granted dismissal of the Other Foreign Pirelli Defendants, but denied dismissal as to Pneus. The Court gave no explanation for the differential treatment of these defendants, and the only apparent factual distinction is that Pneus manufactured the tire.

Florida's Second District Court of Appeal affirmed the Circuit Court's denial of dismissal as to Pneus, without explanation. This petition timely follows.

ARGUMENTS FOR GRANTING CERTIORARI

The jurisdictional issue presented by this petition merits Supreme Court review because: (1) state and federal courts are in continuing conflict and in need of guidance regarding the exercise of jurisdiction over foreign producers based on allegedly defective products arriving in the United States by a stream of commerce; (2) additional delay in resolving this conflict would serve no public interest; (3) the question is important as it arises frequently, involves a preliminary issue for which clarity is needed, affects national and international commerce, and the split of authority presents a ready market for forum shopping; and (4) the Court has already granted review in

two other cases presenting issues which subsume the jurisdictional question here, rendering this petition appropriate for resolution by GVR.

I. Courts Are In Conflict

In *Asahi Metal Indus. v. Superior Court*, 480 U.S. 102 (1987), this Court ruled that a defendant's mere awareness that components it manufactured, sold, and delivered outside the United States would reach the forum state in a stream of commerce was not sufficient to satisfy due process limitations on the exercise of jurisdiction over a foreign defendant. However, that ruling was a fractured set of opinions, expressing separate standards for deciding the issue, none of which received the support of a majority of the Court.

Justice O'Connor announced the judgment of the Court, finding no jurisdiction over the foreign defendant. But portions of her opinion – including a key section regarding founding jurisdiction upon the location of goods arriving by a stream of commerce – were joined by only three other Justices (Rehnquist, Powell, and Scalia). Under Justice O'Connor's view, placement of a product into a stream of commerce with awareness that it may be carried into a forum state would not, by itself, be adequate for the exercise of jurisdiction over a defendant. *Asahi*, 480 U.S. at 108-13 (O'Connor, J., concurring). Justice Brennan wrote a separate opinion, key portions of which also received the support of only four Justices (Brennan,

White, Marshall, and Blackmun), which disagreed with Justice O'Connor's view, and expressed the position that a chain of distribution carrying a product into the forum should be adequate to permit the exercise of jurisdiction over foreign defendants. *Asahi*, 480 U.S. at 116-21 (Brennan, J., concurring). Justice Stevens joined neither of these opinions, and separately presented his own views (joined by Justices White and Blackmun) that the jurisdictional question in such cases should depend upon the volume, value, and hazardous character of the products involved. *Asahi*, 480 U.S. at 121-22 (Stevens, J., concurring).

Ever since the Court's decision in *Asahi*, state and federal courts have struggled with the inconsistent views set forth in these separate opinions. In the ensuing nearly quarter century, courts and commentators have found repeated cause to note the continuing disarray, and plead for the Supreme Court to resolve the ongoing conflict and restore clarity to jurisdictional jurisprudence. *See, e.g., Luv N' Care, Ltd. v. Insta-Mix, Inc.*, 438 F.3d 465, 474 (5th Cir.), *cert. denied*, 548 U.S. 904 (2006) (DeMoss, J., concurring) ("I urge the Supreme Court to resolve" the circuit split); Angela M. Laughlin, *This Ain't the Texas Two Step Folks: Disharmony, Confusion, and the Unfair Nature of Personal Jurisdiction Analysis in the Fifth Circuit*, 37 Cap. U.L. Rev. 681 (2009); 4 Charles A. Wright & Arthur R. Miller, *Fed. Prac. & Proc.* § 1067.4 (3d ed.) ("there is considerable room for more guidance from the Supreme Court on this

issue"). In one recently published chart illustrating this conflict, the standard described in Justice O'Connor's opinion is followed by five Circuits, twenty-eight States, and the District of Columbia. Justice Brennan's opinion is followed by three Circuits and fourteen States. Other states are undecided, or follow a hybrid test that, typically, attempts to synthesize the separate decisions in *Asahi*. Laughlin, 37 Cap. U.L. Rev. at 727.

The uncertainties generated by the conflict between the competing constitutional standards as described above are magnified by an accompanying split of authority over evidentiary burdens and procedures in resolving jurisdictional disputes. *See* Laughlin, 37 Cap. U.L. Rev. at 710-12. Some courts permit a plaintiff's bare pleading allegations to satisfy the initial burden without any evidence unless the defendant first presents evidence to defeat the alleged grounds for the exercise of jurisdiction. *See Turnock v. Cope*, 816 F.2d 332, 333 (7th Cir. 1987); *Dowless v. Warren-Rupp Houdailles, Inc.*, 800 F.2d 1305, 1307 (4th Cir. 1986). Others require a plaintiff to present evidence when jurisdiction is challenged without requiring an initial proffer of evidence by the defense. *See, e.g., Boit v. Gar-Tec Prods., Inc.*, 967 F.2d 671, 675 (1st Cir. 1992). Some courts place the burden on the defendant to demonstrate that the exercise of jurisdiction would be unreasonable. *See, e.g., Future Tech. Today, Inc. v. OSF Healthcare Sys.*, 218 F.3d 1247 (11th Cir. 2000); *Metro. Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 568 (2d Cir.), *cert.*

denied, 519 U.S. 1006, 1007 (1996). Others hold that the burden on all issues relevant to jurisdiction remains with the plaintiff. *See, e.g., Richards v. Aramark Servs., Inc.*, 108 F.3d 925, 928 (8th Cir. 1997).

The uncertainties regarding the appropriate procedures and burdens of proof, stacked upon the uncertainties over what factors should be considered as governing the jurisdictional inquiry, present a jurisprudential botch of contradictory rules governing what should be a straightforward threshold determination. These conflicts are real. They are extensive. They have proven to be enduring. And the only way the conflicting views regarding jurisdiction over foreign defendants might be resolved is through the action of this Court.

II. Further Delay Would Not Serve Any Interest

There is wisdom in allowing certain legal issues a period of time to percolate in the state courts and lower federal courts before presentation to the United States Supreme Court for ultimate resolution. This allows time to increase the number of judicial opinions and professional and academic commentary for this Court to consider, so as to be as fully informed as possible before setting the precedent that will thereafter govern.

The decision in *Asahi* was rendered in 1987. Since then, thousands of state and federal decisions have applied and interpreted the *Asahi* opinions on a

case-by-case basis. In addition, there have been hundreds of references to the competing views of Justice Brennan, et al., and Justice O'Connor, et al., in law reviews and treatises. The matter has been debated and studied as much as any procedural issue in recent memory. More time for more discussion is unlikely to provide any greater light to assist the Court. Further delay would serve no public interest.

III. The Issue Is Of Exceptional Importance

The importance of providing greater clarity in this area is indicated in several respects. For one, the issue arises with tremendous frequency. A Westlaw search as this petition is in draft form indicates that *Asahi* has been cited in 3,395 separate court decisions. A recent commentator has stated that the "threshold question of personal jurisdiction is one of the most litigated issues in federal and state courts." Laughlin, 37 Cap. U.L. Rev. at 712. Because this issue is presented in so many cases, the importance of clear and efficient rules for resolution of jurisdiction over foreign defendants is manifest.

Clear rules are especially important on jurisdictional issues. "Jurisdiction should be as self-regulated as breathing; . . . litigation over whether the case is in the right court is essentially a waste of time and resources." *Navarro Savings Ass'n v. Lee*, 446 U.S. 458, 464 n.13 (1980). *See also Hertz Corp. v. Friend*, 130 S.Ct. 1181, 1193 (2010). Based on the number of cases that have cited *Asahi* and the tremendous

frequency with which these issues arise, there has been a considerable "waste of time and resources" which greater legal clarity would reduce.

Lack of clear rules leads to unpredictability in results. That seems jurisprudentially perverse where, as here, reasonable predictability is a central concern in bringing the due process clause to bear. If the "foreseeability that is critical to due process analysis . . . [requires consideration whether] defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there," *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980), then it subverts this predictability interest to continue an inconsistent morass of rules which undermine any hope of reliably predicting whether, in a particular case, a foreign defendant may be required to submit to the jurisdiction of a state or federal court. *See also Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (due process requires "that individuals have 'fair warning' that a particular activity may subject [them] to the jurisdiction of a foreign sovereign") (quoting *Shafter v. Heitner*, 433 U.S. 186, 218 (1977) (Stevens, J., concurring in judgment)).

The importance of the issue is further reflected by recognition that interstate commerce and international commerce both follow similar rules in this context. Encouraging efficiency in such commerce is key to the economic vitality of our United States. The tremendous litigation costs that have been and continue to be incurred in arguing whether a particular

court has jurisdiction to decide an issue about a matter relevant to such commerce presents a sizable burden on trade among the states and with foreign nations. This argument is presented in some detail in amicus briefs filed by the Chamber of Commerce of the United States in *J. McIntyre Machinery, Ltd. v. Nicastro*, Case No. 09-1343 and in *Goodyear Luxembourg Tires, S.A. v. Brown*, Case No. 10-76.

Whenever there exists such disparity, on an issue that may potentially determine whether a party recovers relief, there is opportunity for the mischief of forum shopping. Just to consider the example of this case, the Plaintiffs might have filed suit in Kansas, where the accident occurred, in either federal or state court. Or in Florida, where they purchased the tire, in either federal or state court. Or in Delaware, where Pirelli Tire, LLC is located, in state or federal court. Where a foreign defendant is involved, as here, with few or no direct contacts in any state beyond the movement of goods in commerce, minimum contacts analysis for due process purposes should lead to the same answer no matter which state suit is filed in, and no matter whether suit be in federal or state court. But the balkanization of law on this issue from state to state and circuit to circuit allows plaintiffs to select the forum most likely to require the foreign defendant to come and defend itself on the merits. *See* Laughlin, 37 Cap. U.L. Rev. at 712-14.

Because the jurisdictional issue arises so frequently, because such threshold questions should follow simple rules to avoid inefficiencies and

untoward costs, because of the significance of trade to our economic well being, and because the present divisions tempt forum shopping, the issue presented is of sufficient national importance to merit review by this Court.

IV. This Case Is Ideally Positioned For GVR

This Court has already recognized the need for guidance on the constitutional limits to the exercise of jurisdiction over foreign defendants, having granted review in two separate cases which provide opportunity for the Court to address the circumstances under which jurisdiction might be exerted over the foreign manufacturer of an allegedly defective product. *See J. McIntyre Machinery, Ltd. v. Nicastro*, Case No. 09-1343; *Goodyear Luxembourg Tires, S.A. v. Brown*, Case No. 10-76. Given the timing of review in these two cases, our closely trailing case is in position for resolution by GVR.

In review of *Nicastro v. McIntyre Machinery America, Ltd.*, 201 N.J. 48, 987 A.2d 575 (N.J.), *cert. granted*, 131 S.Ct. 63 (2010), the Court will consider whether New Jersey may exercise jurisdiction over a foreign manufacturer solely because the manufacturer targeted the United States market for the sale of its product, which was purchased by a forum state consumer. There are optimistic expectations that *Nicastro* will be used by the Court to set clearer rules for determining whether, in a particular case, due process bars a court from exercising jurisdiction over

a foreign defendant. Given the prevailing uncertainties until those clearer rules are issued, it makes sense to permit cases still open for appellate review – such as this one – to be examined in light of the precedent this Court will announce in its review of *Nicastro*.

The Court is also reviewing the jurisdictional rationale of the decision of the North Carolina Court of Appeals in *Brown v. Meter*, 681 S.E.2d 382 (N.C. Ct. App. 2009), *review denied*, 695 S.E.2d 756, 364 N.C. 128 (N.C.), *cert. granted sub nom., Goodyear Luxembourg Tires, S.A. v. Brown*, 131 S.Ct. 63 (2010). While the question in *Brown* involves general jurisdiction, rather than specific jurisdiction on a minimum contacts test, in both *Brown* and *Nicastro* the arguments feature consideration of the circumstances under which actions of a distributor or distribution network might be attributed back to the producer of an allegedly defective product in order to open the door to jurisdiction over the manufacturer or producer of a good. If the briefs and oral arguments provide any basis for prediction, there will likely be some discussion in this Court's decisions resolving *Nicastro* or *Brown*, or both, on that subject. Because the key argument raised by Mr. and Mrs. Gunn for asserting jurisdiction over Pneus has been based on the actions of other entities in distributing tires in the United States, this Court's anticipated opinions in those cases may bear strongly on the correct outcome on that question as to Pneus.

In short, the issues presented in Pneus' petition are subsumed within issues to be addressed by this Court's decisions in two other cases, both of which were argued before this Court on January 11, 2011. Accordingly, this case provides an appropriate opportunity to grant this petition, vacate the decision of Florida's Second District Court of Appeal, and remand for further consideration in light of the decisions of the Court in *Nicastro* and *Brown*, once those cases are decided.

CONCLUSION

Based on the foregoing, Petitioner, Pirelli Pneus Ltda., asks that the Court grant this petition as to the question presented, or in the alternative that the Court hold this petition until decisions are rendered in *Nicastro* and *Brown* and, thereupon, grant the petition, vacate the decision below, and remand for

further consideration in light of the decisions in those cases.

Respectfully submitted,

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NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

PIRELLI PNEUS, LTDA,

Appellant,

v.

GARY GUNN, Individually and as Guardian of Kathy Gunn, an incapacitated person,

Appellee.

Case No. 2D10-2696

Opinion filed December 29, 2010.

Appeal pursuant to Fla. R. App. P. 9.130 from the Circuit Court for Polk County; Neil A. Roddenbery, Judge.

Kevin A. Ashley of Peterson & Myers, P.A., Winter Haven, and Stephen R. Senn of Peterson & Myers, P.A., Lakeland; and C. Vernon Hartline Jr., of Hartline, Dacus, Barger, Dreyer & Kern, Dallas, Texas, for Appellant.

Peter W. van den Boom and John W. Frost, II, of Frost van

de Boom & Smith, P.A., Bartow,
for Appellee.

PER CURIAM.

Affirmed,

LaROSE, KHOUZAM, and
CRENSHAW, JJ., Concur

IN THE CIRCUIT COURT
OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

GARY GUNN, individually and as Guardian of KATHY GUNN, his wife, an Incapacitated person,

Plaintiffs,

v.

PIRELLI TIRE LLC, a foreign limited liability company; PIRELLI NORTH AMERICA INC., a foreign corporation; FRANCISCO'S CUSTOM BODY SHOP INC., a Florida corporation d/b/a Francisco's Cycle Center; LEMANS CORPORATION, a foreign corporation, d/b/a Parts Unlimited; PIRELLI PNEUS Ltda (ex-PIRELLI PNEUS, S.A.), a foreign limited liability company; PIRELLI TYRE S.p.A., a foreign corporation; PIRELLI TYRE HOLLAND N.V., a foreign corporation; PIRELLI & C. S.p. A., a foreign Corporation,

Defendants. /

Case No.: 2008-CA-004858
Section: 15

ORDER GRANTING PIRELLI PNEUS' MOTION FOR CLARIFICATION OF THE COURT'S ORDER ISSUED MAY 6, 2010

(Filed May 20, 2010)

THIS MATTER is before the Court upon Defendant, Pirelli Pneus Ltda.'s Motion for Clarification of an order issued by this Court on May 6, 2010.

The first, second, and last paragraph of the order issued on May 6, 2010, set this Defendant apart from the other Defendants. Thus, the Court's final ruling is clear as to this Defendant. " . . . Defendant Pirelli Pneus Ltda.'s Motion to Quash Service of Process and Motion Dismiss for Lack of Jurisdiction are hereby DENIED." However, out of an abundance of caution the Court adds the following language in italics which reads as follows:

The Court is persuaded by the analysis and case law cited in each of the Defendants' (*Pirelli Tyre S.p.A., Pirelli Tyre Holland N.V., and Pirelli & C. S.p.A.*) Motions to Dismiss and Joint Reply. Thus, the Court adopts and incorporates each of the Defendants' Motion to Dismiss and Joint Reply to grant the dismissal *as to the following Defendants, Pirelli Tyre S.p.A., Pirelli Tyre Holland N.V. and Pirelli & C. S.p.A.*

AMENDED ORDER ON MULTIPLE MOTIONS TO DISMISS AND JUDICIAL NOTICE

THIS MATTER is before the Court upon each of the following Defendants, Pirelli Tyre S.p.A., Pirelli

Tyre Holland N.V., and Pirelli & C. S.p.A. Motion to Dismiss and a Joint Reply in Support of their Motions to Dismiss for Lack of Jurisdiction ("Joint Reply"); Supplemental Filing of notarized affidavits and jurat translations; Joint Response to Plaintiffs' Reply Regarding Defendants' Affidavits in Support of Dismissal for Lack of Jurisdiction; the Court's Order Allowing Defendants' to Respond, issued on April 14, 2010; and Response of Pirelli Pneus, Ltda., Pirelli Tyre, S.p.A., Pirelli Tyre Holland N.V. and Pirelli & C.S.p.A. as Directed by the Court's Order of April 14, 2010.

Defendant, Pirelli Pneus Ltda.'s Motion to Quash Service of Process and Motion Dismiss for Lack of Jurisdiction and Response to Plaintiffs' Reply Regarding Defendant's Affidavits in support of its Motion to Dismiss for Lack of Jurisdiction; and Joint Objections to Plaintiff's Motion for Judicial Notice.

Plaintiffs' Response to each of the Defendants' Motions to Dismiss for Lack of Jurisdiction and Plaintiffs' Response to Pirelli Pneus Ltda's Motion to Quash Service of Process and Motion to Dismiss for Lack of Jurisdiction. Plaintiffs' Notice of Intent to Request this Court to Take Judicial Notice and Motion for Judicial Notice; Plaintiffs' Motion to Strike Defendants' Joint Responses to Plaintiffs' Reply Regarding Defendants' Affidavits in Support of Dismissal for Lack of Jurisdiction and Motion to Strike the Supplemental Filings of Defendants' Affidavits and Objection to the Introduction of the Affidavits

into evidence post evidentiary hearing ("Motions to Strike").

The Court, having reviewed the submissions, pleadings, applicable case law, and having heard and considered the arguments of the parties at the evidentiary hearing conducted by the Court on March 18, 2010, and otherwise being informed in the matter, finds as follows:

Plaintiffs withdrew their motion to continue. The Plaintiffs argued at the evidentiary hearing the affidavits were ineffective and objected to the Court letting the Defendants' file supplemental affidavits. The Court orally denied the objection at the evidentiary hearing to allow the Defendants' to file the original affidavits. Plaintiffs subsequently filed their Motions to Strike and the Court allowed the Defendants' to answer the Plaintiffs Motions to Strike. The Defendants' filed the necessary documents which were translated. The Court finds the affidavits to be competent pursuant to Section 92.50(3), Fla. Stat.

The Court is persuaded by the analysis and case law cited in each of the Defendants' (Pirelli Tyre S.p.A., Pirelli Tyre Holland N.V., and Pirelli & C. S.p.A.) Motions to Dismiss and Joint Reply. Thus, the Court adopts and incorporates each of the Defendants' Motion to Dismiss and Joint Reply to grant the dismissal as to the following Defendants, Pirelli Tyre S.p.A., Pirelli Tyre Holland N.V., and Pirelli & C. S.p.A. The Court agrees with the analysis and case law in the Defendants' Joint Objection to Plaintiffs'

Motion for Judicial Notice. Hence, this Court adopts and incorporates by reference the Defendants' Joint Objection to Plaintiffs' Motion for Judicial Notice for the denial.

Therefore, it is **ORDERED AND ADJUDGED** that each of the Defendants, (Pirelli Tyre S.p.A., Pirelli Tyre Holland N.V., and Pirelli & C. S.p.A.) Motions to Dismiss for Lack of Jurisdiction are hereby **GRANTED**; Defendant Pirelli Pneus Ltda.'s Motion to Quash Service of Process and Motion Dismiss for Lack of Jurisdiction are hereby **DENIED**. It is further **ORDERED** that Plaintiffs' Motion for Judicial Notice and Plaintiffs' Motions to Strike are hereby **DENIED**.

DONE AND ORDERED in Bartow, Polk County, Florida on this ___ day of MAY 19 2010, 2010.

/s/ Neil A. Roddenbery
NEIL A. RODDENBERY,
Circuit Judge

[Service List Omitted In Printing]

IN THE CIRCUIT COURT
OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

GARY GUNN, individually and as Guardian of KATHY GUNN, his wife, an Incapacitated person,

Plaintiffs,

v.

PIRELLI TIRE LLC, a foreign limited liability company; PIRELLI NORTH AMERICA INC., a foreign corporation; FRANCISCO'S CUSTOM BODY SHOP INC., a Florida corporation d/b/a Francisco's Cycle Center; LEMANS CORPORATION, a foreign corporation, d/b/a Parts Unlimited; PIRELLI PNEUS Ltda (ex-PIRELLI PNEUS, S.A.), a foreign limited liability company; PIRELLI TYRE S.p.A., a foreign corporation; PIRELLI TYRE HOLLAND N.V., a foreign corporation; PIRELLI & C. S.p. A., a foreign Corporation,

Defendants. /

Case No.: 2008-CA-004858
Section: 15

ORDER ON MULTIPLE MOTIONS TO DISMISS AND JUDICIAL NOTICE

THIS MATTER is before the Court upon each of the following Defendants, Pirelli Tyre S.p.A., Pirelli Tyre Holland N.V., and Pirelli & C. S.p.A. Motion to Dismiss and a Joint Reply in Support of their Motions to Dismiss for Lack of Jurisdiction ("Joint Reply"); Supplemental Filing of notarized affidavits and jurat translations; Joint Response to Plaintiffs' Reply Regarding Defendants' Affidavits in Support of Dismissal for Lack of Jurisdiction; the Court's Order Allowing Defendants' to Respond, issued on April 14, 2010; and Response of Pirelli Pneus, Ltda., Pirelli Tyre, S.p.A., Pirelli Tyre Holland N.V., and Pirelli & C.S.p.A. as Directed by the Court's Order of April 14, 2010.

Defendant, Pirelli Pneus Ltda.'s Motion to Quash Service of Process and Motion Dismiss for Lack of Jurisdiction and Response to Plaintiffs' Reply Regarding Defendant's Affidavits in support of its Motion to Dismiss for Lack of Jurisdiction; and Joint Objections to Plaintiff's Motion for Judicial Notice.

Plaintiffs' Response to each of the Defendants' Motions to Dismiss for Lack of Jurisdiction and Plaintiffs' Response to Pirelli Pneus Ltda's Motion to Quash Service of Process and Motion to Dismiss for Lack of Jurisdiction. Plaintiffs' Notice of Intent to Request this Court to Take Judicial Notice and Motion for Judicial Notice; Plaintiffs' Motion to Strike Defendants' Joint Responses to Plaintiffs' Reply

Regarding Defendants' Affidavits in Support of Dismissal for Lack of Jurisdiction and Motion to Strike the Supplemental Filings of Defendants' Affidavits and Objection to the Introduction of the Affidavits into evidence post evidentiary hearing ("Motions to Strike").

The Court, having reviewed the submissions, pleadings, applicable case law, and having heard and considered the arguments of the parties at the evidentiary hearing conducted by the Court on March 18, 2010, and otherwise being informed in the matter, finds as follows:

Plaintiffs withdrew their motion to continue. The Plaintiffs argued at the evidentiary hearing the affidavits were ineffective and objected to the Court letting the Defendants' file supplemental affidavits. The Court orally denied the objection at the evidentiary hearing to allow the Defendants' to file the original affidavits. Plaintiffs subsequently filed their Motions to Strike and the Court allowed the Defendants' to answer the Plaintiff's Motions to Strike. The Defendants' filed the necessary documents which were translated. The Court finds the affidavits to be competent pursuant to Section 92.50(3), Fla. Stat.

The Court is persuaded by the analysis and case law cited in each of the Defendants' Motions to Dismiss and Joint Reply. Thus, the Court adopts and incorporates each of the Defendants Motion to Dismiss and Joint Reply to grant the dismissal. The Court agrees with the analysis and case law in the

Defendants' Joint Objection to Plaintiffs' Motion for Judicial Notice. Hence, this Court adopts and incorporates by reference the Defendants' Joint Objection to Plaintiffs' Motion for Judicial Notice for the denial.

Therefore, it is **ORDERED AND ADJUDGED** that each of the Defendants, (Pirelli Tyre S.p.A., Pirelli Tyre Holland N.V., and Pirelli & C. S.p.A.) Motions to Dismiss for Lack of Jurisdiction are hereby **GRANTED**; Defendant Pirelli Pneus Ltda.'s Motion to Quash Service of Process and Motion Dismiss for Lack of Jurisdiction are hereby **DENIED**. It is further **ORDERED** that Plaintiffs' Motion for Judicial Notice and Plaintiffs' Motions to Strike are hereby **DENIED**.

DONE AND ORDERED in Bartow, Polk County, Florida on this MAY 06 2010 day of _____, 2010.

/s/ NEIL A. RODDENBERY
NEIL A. RODDENBERY,
Circuit Judge

[Service List Omitted In Printing]